

REMARKS

Responsive to the Office Action, Applicant has canceled Claims 2, 3 and 6 through 8. Claims 1, 4 and 5 have been amended to clearly distinguish the subject matter of these claims over the prior art. New Claims 9 and 10 are presented and are believed to be patentably distinct and necessary to fairly protect the instant invention. Consideration for allowance of the claims presented with this amendment is requested for the cogent reasons set forth hereinbelow.

Claim 1 has been amended to include the recitation of original Claim 1 and substantially all of the recitation of original Claim 3. Claim 1, as amended, recites an over the road concrete mixer truck with a rotatable mixer drum which includes indicia on the drum configured to indicate an object selected from a group consisting of a ball used in an athletic endeavor and an object having a shape similar to the shape of the drum so as to present either an advertising message or an eye-catching presentation on the mixer drum. Claim 4, which recites that the indicia is configured to simulate the appearance of a football, has been amended to depend from amended Claim 1.

In the Office Action, the Examiner rejected Claims 2 through 4 and 6 through 8 under 35 U.S.C. 103(a) as being unpatentable over the teaching of U.S. Patent 6,042,259 to Hines et al in view of U.S. Design Patent 257,735 to Breneman and further in view of the Internet web page of www.malcomdesigns.com depicting a Hot Wheels toy cement mixer motor truck. The Hines et al reference is directed to a material dispensing and monitoring system for concrete mixer trucks wherein a form of indicia (15), as illustrated in the patent drawings, may be provided on the rotating concrete mixer drum. However, the purpose of the indicia (15) is merely to identify the truck so that the truck may be tracked by the automated material dispensing and monitoring system. Hines et al certainly fails to suggest or appreciate providing an over the road concrete mixer motor truck with a mixer drum which includes at least one of an advertising message and an eye

catching presentation on the mixer drum and which is configured to indicate an object selected from a group consisting of a ball used in an athletic endeavor and an object having a shape similar to the shape of the drum as required by amended Claim 1. Hines et al certainly fails to suggest that the indicia on the drum should be such as to simulate the appearance of a football as required by Claim 4.

With regard to the Breneman reference, this design patent depicts a toy cement mixer truck body which has elongated axially extending spaced apart stripes on the mixer drum which may be disposed in a somewhat spiral fashion, as indicated from at least Figure 4 of the patent drawings. With regard to the malcomdesigns.com reference, the toy cement mixer truck depicted therein appears to show the word "cement" written circumferentially around the drum but not extending axially or in a spiral fashion with respect to the axis of rotation of the drum. Accordingly, modifying the indicia on the drum of the Hines et al reference to show longitudinal spaced apart stripes or the word "cement" disposed in a circumferential manner on the drum would not suggest or make obvious to one of ordinary skill in the art the provision of a drum having indicia which is configured to indicate an object selected from a group consisting of a ball used in an athletic endeavor or an object having a shape similar to the shape of the drum as required by amended Claim 1. None of the references taken alone or in combination suggest or make obvious an over the road concrete mixer motor truck as set forth in amended Claims 1 or 4. Consideration for allowance of amended Claim 1 and Claim 4, dependent thereon, is respectfully requested.

Claim 5 has been amended to include the recitation of canceled Claim 8, together with further recitation similar in some respects to the recitation added to Claim 1. Claim 5 provides a method for displaying one of a message and advertising a product or service by providing an over the road concrete mixer truck with a generally cylindrical rotatable mixer drum and providing indicia on the drum which simulates the

appearance of an article other than the drum and which has a shape selected from a group consisting of a ball used in an athletic endeavor and an object having a shape similar to the shape of the drum. Claim 5, as amended, is believed to recite a method which is unobvious considering the teaching of the Hines et al reference in view of the Breneman reference and the malcomdesigns.com Hot Wheels reference. As pointed out hereinabove with respect to the patentability of Claim 1, none of these references, taken alone or one modified in view of the other, suggests a method of displaying a message and advertising a product or service which includes providing indicia on an over the road concrete mixer truck which simulates the appearance of an article other than the mixer drum and which has a shape selected from a group consisting of a ball used in an athletic endeavor and an object having a shape similar to the shape of the drum. In at least these respects Claim 5, as amended, is believed to distinguish over the references of record and consideration for allowance of Claim 5 is also respectfully requested.

Applicant presents with this amendment new Claims 9 and 10 which are believed to be necessary to fairly protect the invention. Claim 9 is directed to a concrete mixer motor truck having a rotatable drum with indicia formed thereon comprising signage providing one of an advertising and identifying message, which signage extends substantially axially in a helical pattern with respect to the axis of rotation of the drum and comprises alternate signs on the drum which are inverted with respect to each other so as to be readable from opposite sides of the drum during rotation thereof. Claim 10 is similar in some respects to Claim 9 but is directed to a method for displaying a message and advertising of a product by providing a concrete mixer truck with a rotatable drum and with indicia on the drum comprising signage as recited above for Claim 9.

None of the references of record in this application disclose or suggest the provision of signage on a rotating concrete mixer drum which extends substantially axially and in a

helical pattern with respect to the axis of rotation of the drum and comprises alternate signs on the drum which are inverted with respect to each other so as to be readable from opposite sides of the drum during rotation thereof. This unique form of displaying messages or advertisements is not disclosed in or suggested by the prior art and the subject matter of Claims 9 and 10 is therefore believed to be patentably distinct. Consideration for allowance of Claims 9 and 10 is respectfully requested.

Applicant has made a diligent effort to advance the prosecution of this application by canceling claims, amending claims and by pointing out with particularity herein how the claims now presented distinguish over the prior art. Accordingly, an early Notice of Allowance of Claims 1, 4, 5, 9 and 10 is respectfully solicited.

Respectfully submitted,

Date: Dec. 10, 2002

Michael E. Martin
Michael E. Martin
Registration No. 24,821
Agent for Applicant

Gardere Wynne Sewell LLP
1601 Elm Street, Suite 3000
Dallas, Texas - 75201-4761
Phone (214) 999-4052
Fax (214) 999-3052



RECEIVED
DEC 19 2002
TC 1700

Serial No. 09/982,582
Group 1723
Examiner: SOOHOO, TONY GLEN

MARKED UP AMENDED CLAIMS
(AMENDMENT A)

1. (Amended) An over-the-road concrete mixer motor truck having a rotatable concrete mixer drum mounted thereon, said concrete mixer drum including indicia thereon providing one of an advertising message and an eye-catching presentation which is facilitated by the shape of the drum and its rotation, and wherein said indicia is configured to indicate an object selected from a group consisting of a ball used in an athletic endeavor and an object having a shape similar to the shape of said drum.

4. (Amended) The concrete mixer truck set forth in Claim [3] 1 wherein:

said indicia is configured to simulate the appearance of a football.

5. (Amended) A method for displaying one of a message and advertising a product or service comprising the steps of:

providing an over-the-road concrete mixer truck having a generally cylindrical concrete mixer drum mounted thereon for rotation about a longitudinal axis of said drum; and

providing indicia on said drum which [utilizes at least one of the shape and rotation of said drum to provide a visual display] simulates the appearance of an article other than said drum and which has a shape selected from a group consisting of a ball used in an athletic endeavor and an object having a shape similar to the shape of said drum.